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MONTANA LEGISLATIVE HISTORY

Chapter 258 19 89

Bill H 527 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	2/12	✓ C	Hearing Date(s)	3/23	✓ C
	2/17	✓ C		3/24	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____ Yes ✓ No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

257 *(House Bill No. 455; Soft)* GENERALLY REVISING THE LAWS RELATING TO ADOPTION; AMENDING SECTIONS 42-1-105, 42-2-206, 42-2-217, 42-2-412, 42-2-607, 42-2-609, 42-2-610, 42-2-619, 42-3-203, 42-3-212, 42-3-213, 42-4-302, 42-4-303, 42-4-304, 42-4-309, 42-4-310, 42-5-101, 42-5-109, AND 42-5-202, MCA; REPEALING SECTION 42-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 796

258 *(House Bill No. 527; Harper)* REQUIRING IMPOSITION OF THE RESTRICTION OF DRIVING A MOTOR VEHICLE EQUIPPED WITH A FUNCTIONING IGNITION INTERLOCK DEVICE AS A CONDITION FOR ISSUANCE OF A PROBATIONARY DRIVER'S LICENSE UPON A SECOND OR SUBSEQUENT VIOLATION OF DRIVING WHILE INTOXICATED OR UNDER THE INFLUENCE OF ALCOHOL; AND AMENDING SECTIONS 61-2-302, 61-5-208, AND 61-8-442, MCA 806

259 *(House Bill No. 617; Ohs)* RESTRUCTURING THE MEMBERSHIP OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING THE AUTHORITY OF THE BOARD; AMENDING SECTIONS 2-15-2108 AND 75-11-318, MCA; AND PROVIDING AN EFFECTIVE DATE 809

260 *(Senate Bill No. 13; McNutt)* EXPANDING THE SCOPE AND DURATION OF THE MOTOR VEHICLE ELECTRONIC RECORD PILOT PROGRAM OF THE DEPARTMENT OF JUSTICE; AMENDING SECTION 61-3-109, MCA, AND SECTION 4, CHAPTER 90, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 810

261 *(Senate Bill No. 239; Roush)* REQUIRING THE DEPARTMENT OF REVENUE TO AID SOLID WASTE MANAGEMENT DISTRICT BOARDS BY PROVIDING INFORMATION TO BE USED TO DETERMINE RATES FOR SERVICE CHARGES; AND AMENDING SECTION 7-13-231, MCA 811

262 *(Senate Bill No. 404; McNutt)* PROVIDING THAT THE ASSETS OF AN INDIVIDUAL RETIREMENT ACCOUNT ARE EXEMPT FROM EXECUTION OF JUDGMENT TO THE EXTENT OF CONTRIBUTION LIMITS TO THE ACCOUNT; PROVIDING THAT THE EXCEPTION DOES NOT APPLY TO CHILD SUPPORT AND CERTAIN FAMILY SUPPORT ORDERS; AMENDING SECTION 25-13-608, MCA; AND PROVIDING AN APPLICABILITY DATE 812

263 *(Senate Bill No. 419; Shea)* CLARIFYING THAT CERTAIN PUBLICLY OWNED LICENSES ARE ELIGIBLE FOR GAMBLING ACTIVITIES; PROVIDING THAT LESSEES OF LICENSES ISSUED TO AIRPORT AUTHORITIES AND PUBLIC GOLF COURSES ARE ALSO ELIGIBLE TO OFFER CERTAIN GAMBLING ACTIVITIES; CLARIFYING THAT OWNERS OF RESORT LICENSES ARE ELIGIBLE TO OFFER CERTAIN GAMBLING ACTIVITIES; AMENDING SECTION 23-5-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 813

264 *(Senate Bill No. 439; Hertel)* REVISING THE DEFINITIONS OF "SEASONAL ESTABLISHMENT" AND "SMALL ESTABLISHMENT" AS THE DEFINITIONS APPLY TO THE LICENSURE OF GUEST RANCHES AND OUTFITTING AND GUIDE FACILITIES TO ENSURE THAT THE NUMBER OF GUESTS FOR WHOM ACCOMMODATIONS ARE PROVIDED DURING THE ESTABLISHMENT'S SEASON OF OPERATION IS DETERMINED BY USING AN AVERAGE; AND AMENDING SECTION 50-51-102, MCA 814

265 *(House Bill No. 277; Pavlovich)* REPEALING THE PROVISION THAT ALLOWS LICENSING OF CHIROPRACTORS FROM OTHER STATES

HB 527 Introduced by Harper, et al. *LC0554 Drafter: Fox*

Require Imposition of the Restriction of Driving a Motor Vehicle Equipped with a Functioning Ignition Interlock Device as a Condition for Issuance of a Probationary Driver's License upon a Second or Subsequent Violation of Driving While Intoxicated or under the Influence of Alcohol;...

2/05	Fiscal Note Requested		
2/06	Introduced and 1st Reading		
2/06	Referred to Judiciary		
2/10	Fiscal Note Received		
2/11	Fiscal Note Signed		
2/12	Fiscal Note Printed		
2/12	Hearing		
2/17	Committee Executive Action--Bill Passed	18	2
2/18	Committee Report--Bill Passed		
2/20	2nd Reading Passed	90	9
2/22	3rd Reading Passed	93	7
	Transmitted to Senate		
2/23	Referred to Judiciary		
3/23	Hearing		
3/25	Committee Executive Action--Bill Concurred	7	1
3/25	Committee Report--Bill Concurred		
3/29	2nd Reading Concurred	49	0
3/30	3rd Reading Concurred	45	5
	Returned to House		
3/31	Sent to Enrolling		
3/31	Returned from Enrolling		
3/31	Signed by Speaker		
3/31	Signed by President		
4/01	Transmitted to Governor		
4/05	Signed by Governor		
4/07	Chapter Number Assigned		
	Chapter Number 258		
	Effective Date: 10/01/1999 - All Sections		

HB 528 Introduced by Juneau, et al. *LC1611 Drafter: McClure*

Implement Article X, Section 1(2), of the Montana Constitution Regarding the State of Montana's Recognition of the Distinct and Unique Cultural Heritage of American Indians and the State's Commitment to Establish Educational Goals That Will Preserve the Cultural Integrity of American Indians;...

2/05	Fiscal Note Requested		
2/06	Introduced and 1st Reading		
2/06	Referred to Education		
2/11	Fiscal Note Received		
2/12	Fiscal Note Signed		
2/12	Fiscal Note Printed		
2/12	Hearing		
2/15	Committee Executive Action--Bill Passed as Amended	11	7
2/15	Committee Report--Bill Passed as Amended		
2/18	2nd Reading Passed	71	27
2/19	3rd Reading Passed	74	25
	Transmitted to Senate		

House BILL NO. 527

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING IMPOSITION OF THE RESTRICTION OF DRIVING A MOTOR VEHICLE EQUIPPED WITH A FUNCTIONING IGNITION INTERLOCK DEVICE AS A CONDITION FOR ISSUANCE OF A PROBATIONARY DRIVER'S LICENSE UPON A SECOND OR SUBSEQUENT VIOLATION OF DRIVING WHILE INTOXICATED OR UNDER THE INFLUENCE OF ALCOHOL; AND AMENDING SECTIONS 61-2-302, 61-5-208, AND 61-8-442, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-2-302, MCA, is amended to read:

"**61-2-302. Establishment of driver** rehabilitation and **improvement program -- participation by offending drivers.** (1) The department may establish by administrative rules a driver rehabilitation and improvement program or programs that may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(2) Official participation in the driver rehabilitation and improvement program is limited to those persons ~~who are not subject to an ignition interlock restriction imposed under 61-8-442 and~~ whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or, unless otherwise provided by the sentencing court, a violation of 45-5-624; or

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation or, if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any

person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver improvement program and meets the eligibility requirements of subsection (2).

(4) In the event that a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order must be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department may establish a schedule of fees that may be charged those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or ~~a~~ hearing examiner of the department.

(9) The department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

Section 2. Section 61-5-208, MCA, is amended to read:

"**61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device required on second or subsequent offense.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) A person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the

revocation was for a cause ~~which~~ that has been removed. After the expiration of the period of the revocation or suspension, the person may make application for a new license or endorsement as provided by law but the department may not issue a new license or endorsement unless and until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in Montana. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year~~, except that if~~ and upon issuance of any restricted probationary license during the period of revocation, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device. If the 1-year period passes and the person has not completed an alcohol information course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both are completed.

(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with any ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension ~~or revocation~~ of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension ~~or revocation~~ has expired and any required alcohol information course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to, operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension ~~or revocation~~ for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension ~~or revocation~~ has been reinstated due to violation of an ignition interlock restriction.

(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(5) The period of revocation for ~~any~~ a person convicted of any offense ~~which~~ that makes mandatory the revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and subsection (2) of this section."

Section 3. Section 61-8-442, MCA, is amended to read:

"**61-8-442. Driving under the influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device ~~required~~ discretionary on first offense.** (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court may restrict a defendant to ~~only~~ driving only a motor vehicle equipped with a functioning ignition interlock device and require the defendant to pay the reasonable cost of leasing, installing, and maintaining the device if:

(a) the court determines that approved ignition interlock devices are reasonably available; ~~and~~

(b) ~~(i)~~ the defendant's blood alcohol concentration at the time of the arrest was 0.18% or greater; ~~or~~ and

~~(ii)~~(c) the defendant ~~previously~~ has not been previously convicted of a violation of 61-8-401 or 61-8-406.

(2) Any restriction imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

(3) The duration of a restriction imposed under this section must run parallel to the time period for suspension ~~or revocation~~ of the driver's license of the defendant in accordance with 61-2-107, 61-5-205, and 61-5-208 and must be monitored by the department."

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on February 12, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Chris Ahner (R)

Members Absent: Rep. Steven Gallus (D)

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 527, HB 530, 2/8/1999
Executive Action: HB 84 and 481-Tabled; HB-Do Pass, HB 459-Do Pass as

amended, HB 492-Do Pass as amended.

HEARING ON HB 527

Sponsor:

Rep. Harper presented HB 527.
{Tape : 1; Side : A; Approx. Time Counter : 27 - 67}

Proponents:

Steve Browning, Annehauser-Busch Co.
{Tape : 1; Side : A; Approx. Time Counter : 67 - 127}
EXHIBIT(juh35a01)
EXHIBIT(juh35a02)
EXHIBIT(juh35a03)

EXHIBIT(juh35a04) video
Jim Murphy, District Crt. Judge ON HB
{Tape : 1; Side : A; Approx. Time Counter : 127 - 179}
Gary Martenson, self, alcoholic
{Tape : 1; Side : A; Approx. Time Counter : 179 - 197}
Sue Akey, Montana AAA
{Tape : 1; Side : A; Approx. Time Counter : 197 - 203}
Brenda Nordlund, Dept. of Justice
{Tape : 1; Side : A; Approx. Time Counter : 203 - 323}
Christy Blazer, Beer/Wine Distributors Assoc.
{Tape : 1; Side : A; Approx. Time Counter : 323 - 348}

Opponents:

None

Informational Testimony:

William Shearer, Rocky Mtn. Interlock
{Tape : 1; Side : A; Approx. Time Counter : 348 - 413}

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 413 - 550}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 162}

Sponsor Close:

Rep. Harper made closing statements.
{Tape : 1; Side : B; Approx. Time Counter : 162 - 181}

EXHIBIT(juh35a05)

HEARING ON HB 530

Sponsor:

Rep. McGee presented HB 530.
{Tape : 1; Side : B; Approx. Time Counter : 181 - 550}
EXHIBIT(juh35a06)
EXHIBIT(juh35a07)
EXHIBIT(juh35a08)

Proponents:

MaryAnne Heirrins, Mission for Life
{Tape : 2; Side : A; Approx. Time Counter : 0 - 64}
EXHIBIT(juh35a09)
EXHIBIT(juh35a10)
EXHIBIT(juh35a11)
EXHIBIT(juh35a12)
George Mulcaire-Jones, M.D.
{Tape : 2; Side : A; Approx. Time Counter : 64 - 123}
Sharon Hoff, Montana Catholic Conference
{Tape : 2; Side : A; Approx. Time Counter : 123 - 174}
EXHIBIT(juh35a13)
Arletta Randash, Eagle Forum

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on February 17, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: No Bills heard.

Executive Action: HB 243, 388, 552, 576-Tabled; HB 104-Do Pass as Amended, HB 59-Do Pass as Amended, HB 527-Do Pass, HB 530-Do Pass as Amended, HB 566-Do Pass as Amended; HB 593-Do Pass as Amended.

EXECUTIVE ACTION ON HB 54

Motion/Vote: **REP. GALLUS** moved **HB 54-MOTION TO REMOVE FROM "TABLED" STATUS. Motion failed 9-11 with P. Clark, Curtiss, Facey, Gutsche, Hurdle, Jore, Molnar, Noennig, Shockley, Williams, and Wyatt voting nay.**
{Tape : 1; Side : A; Approx. Time Counter : 21 - 95}

EXECUTIVE ACTION ON HB 127

Motion: **REP. EGGERS** moved **HB 127-MOVE FROM "TABLED" STATUS. MOTION PASSED.** Motion/Vote: **REP. EGGERS** moved **HB 127 MOVE AMENDMENT;. Motion carried 20-0.**
Motion: **REP. AHNER** moved that **HB 127 DO PASS AS AMENDED.**
Motion: **REP. NOENNIG** moved that **HB 127 BE AMENDED.**
Substitute Motion: **REP. MCGEE** made a substitute motion **HB 127. AMENDMENT FAILS.** Motion: **REP. SHOCKLEY** moved that **HB 127 BE AMENDED.**
Motion/Vote: **REP. YOUNKIN** moved that **HB 127-NOENNIG AMENDMENT BE PASSED. Motion carried 20-0.** Motion: **REP. AHNER** moved that **HB 127 DO PASS AS AMENDED.**
Motion: **REP. MCGEE** moved that **HB 127 BE TABLED. MOTION FAILED.**
Motion: **REP. MCGEE** moved that **HB 127 BE AMENDED. MOTION PASSES.**
Motion: **REP. EGGERS** moved **HB 127-SUBSTITUTE AMENDMENT. MOTION PASSES.**
Motion: **REP. MCGEE** moved that **HB 127-MOVE ADDITIONAL AMENDMENT (4) DO PASS AS AMENDED. MOTION PASSED.** Motion/Vote: **REP. NOENNIG** moved **HB 127-MOVE AMENDMENTS 1,2,&3. Motion carried 20-0.**
Motion: **REP. GUTSCHE** moved **HB 127-MOVE AMENDMENT.**
Motion/Vote: **REP. SHOCKLEY** moved that **HB 127 BE TABLED. Motion failed 9-11 with P. Clark, Eggers, Facey, Gallus, Gutsche, Hurdle, Kitzenberg, Noennig, Soft, Williams, and Wyatt voting nay.** Motion/Vote: **REP. SOFT** moved **HB 127-MOVED TO POSTPONE. Motion carried 20-0.**
{Tape : 1; Side : A; Approx. Time Counter : 95 - 550}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 550}

Motion/Vote: REP. GUTSCHE moved that HB 127-OFFER MCMASTER AMENDMENTS BE AMENDED. Motion carried 18-2 with Anderson and Younkin voting no.
Motion/Vote: REP. GALLUS moved that HB 127 DO PASS AS AMENDED. Motion carried 15-5 with R. Clark, Curtiss, Jore, Shockley, and Molnar voting no.
{Tape : 3; Side : A; Approx. Time Counter : 350 - 550}
{Tape : 3; Side : B; Approx. Time Counter : 0 - 74}

EXECUTIVE ACTION ON HB 388

Motion: REP. YOUNKIN moved that HB 388 DO PASS.
Motion/Vote: REP. YOUNKIN moved that HB 388 BE TABLED. Motion carried 15-5 with Clark, Curtiss, Jore, McGee, and Molnar voting no.
{Tape : 3; Side : B; Approx. Time Counter : 74 - 140}

EXECUTIVE ACTION ON HB 527

Motion/Vote: REP. SOFT moved that HB 527 DO PASS. Motion carried 18-2 with Anderson and Jore voting no.
{Tape : 3; Side : B; Approx. Time Counter : 140 - 211}

EXECUTIVE ACTION ON HB 530

Motion: REP. MCGEE moved that HB 530 DO PASS.
Motion/Vote: REP. MCGEE moved that HB 530 BE AMENDED. Motion carried 15-5 with Facey, Gutsche, Hurdle, Williams, and Wyatt voting no.
Motion: REP. MCGEE moved that HB 530 DO PASS AS AMENDED.
Motion/Vote: REP. WYATT moved that HB 530 BE AMENDED. Motion failed 7-13 with Ahner, Anderson, R. Clark, P. Clark, Curtiss, Jore, Kitzenberg, McGee, Molnar, Noennig, Shockley, Soft, and Younkin voting nay. Motion: REP. P. CLARK moved that HB 530 BE AMENDED.
Motion: REP. MCGEE moved that HB 530- SUBSTITUTE AMENDMENTS-YOUNKIN OFFER SUBSTITUTE AMENDMENTS; BE AMENDED: YOUNKIN AMENDMENTS PASSES; 11-9 WITH Facey, Hurdle, Gutsche, Soft, Eggers, Jore, Wyatt, Gallus and Williams voting no. Motion/Vote: REP. MCGEE moved that HB 530 DO PASS AS AMENDED. Motion carried 13-7 with Eggers, Facey, Gallus, Gutsche, Hurdle, Williams, and Wyatt voting no.
{Tape : 3; Side : B; Approx. Time Counter : 211 - 550}

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 23, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)

Members Excused: Sen. Walter McNutt (R)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 244, HB 339, HB 374, HB 527, 3/20/1999
Executive Action: HB 115, HB 203, HB 244, HB 257, HB 308, HB 374, HB 382, HB 396

HEARING ON HB 374

Sponsor: **REP. JOAN HURDLE, HD 13, Billings**

Proponents: **Allen Horsfall, Montana Board of Crime Control**
Sharon Hoff, Montana Catholic Conference
Al Smith, Citizen - Montana Abolition Coalition

sentenced to death and then having to spend twenty years on death row before execution. We need to find ways to hold children accountable and yet remember that they are children.

Al Smith, Citizen - Montana Abolition Coalition, rose in support of the amendments offered. The original intent of the bill provided for 18 to be the age provided for in the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HALLIGAN asked for more information on the discussion in the House Committee where age 18 was changed to age 16. **REP. HURDLE** explained that the sole purpose was to fold in **REP. SOFT'S** bill which provided for youth age 16 or mentally retarded. The bills were not melded together but HB 374 did retain the age 16 provision.

SEN. BARTLETT asked why the bill was not folded into HB 374. **REP. HURDLE** responded that the concept of mentally retarded did not fit into HB 374. She was not in the meeting when HB 374 was passed out of Committee with the age 16 concept still in the bill.

Closing by Sponsor:

REP. HURDLE summarized that since 1976 there have been twelve men executed for crimes they committed as juveniles. The average length of stay on death row for those men was over twelve years. All had committed crimes at age 17. Montana is one of only a few states which allow youths to be executed in this fashion. It is very appropriate for this provision to be changed.

{Tape : 1; Side : A; Approx. Time Counter : 9.20}

HEARING ON HB 527

Sponsor: **REP. HAL HARPER, HD 52, Helena**

Proponents: **Steve Browning, Anheuser Busch**
Brenda Nordlund, Department of Justice
William Shear, Rocky Mountain Interlock Devices

Opponents: **Lucas Foust, Lewis and Clark County Public Defenders Office**

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, Helena, introduced HB 527 which offers a better way of addressing the problem of drunk driving. When a person is charged with a DUI and loses his or her license, they usually drive anyway. They need to get to work or school. This bill involves having an interlock ignition device to be installed in the vehicle following a second or subsequent DUI. In the 1997 Legislative Session a bill was passed to allow this to be voluntary. It was only used a few times. There are 27 users in the state even though 1300 people could be using this device.

Following a second DUI, if the offender wants to drive it is necessary to have this device installed in his or her vehicle. The person needs to blow into the device before the car will start. There is a rolling retest on the device which makes the driver blow into the device again. There is a record of the rolling retest which includes the time, date, and alcohol content. These devices will allow a person to blow into the device three times before the car will refuse to start for 15 minutes.

A user has told him that classes he has attended provide theory on how to deal with his problem but this device gave him something he needed to deal with on a daily basis. It reminds him of his problem and helps to keep him straight because his child and wife depend on his ability to drive a vehicle.

The device costs approximately $75 to install and remove. There is also a $60 to $65 per month charge. This is an effective way to get drunk drivers off the road. It allows them to be productive citizens.

{Tape : 1; Side : A; Approx. Time Counter : 9.25}

Proponents' Testimony:

Steve Browning, Anheuser Busch, commented that prior to 1997, some judges used ignition interlock devices as a part of their probationary power. The 1997 provision authorized these devices but they still have not been widely used. He provided two handouts, **EXHIBIT(jus65a01)** and **EXHIBIT(jus65a02)**. A major problem for traffic safety includes hard core drunk drivers, who represent less than one percent of the drivers on the road but are responsible for more than half of the road fatalities. Hard core drunk drivers drive at alcohol content levels that would be fatal for most people.

Brenda Nordlund, Department of Justice, claimed that in 1998, Montana recorded 5,746 DUIs or BAC (blood alcohol content) violations. Of this amount, 1,328 offenses were second or subsequent offenses. Only 27 offenders were sentenced by the courts, under the current discretionary section, to use an interlock device. The statistics for 1997 are worse. In 1997, there were 5,771 DUI or BAC offenders. Second or subsequent offenders amount to 1,389 and eight were sentenced to an interlock restriction.

This bill will change the model so the discretion to impose the ignition interlock on a second or subsequent offender no longer lies with the justice of the peace but instead will be part of the administrative license for relicensure. After a second or subsequent DUI, the driver's license is revoked for a period of one year. Under present law, the offender has the ability to receive a probationary license after serving three months of the one year period provided SR22 insurance has been filed, and the treatment required by the court has been completed.

This bill will allow drivers to receive their driver's license on a probationary status before the three month period. They will be eligible for a probationary drivers license once they complete treatment and provide proof of compliance with the ignition interlock device. This is optional in that the person may spend the one year revocation period without any driving privileges.

The reality of this population is that of the 1,300 second or subsequent DUI and BAC offenders in 1998, only 144 of them came back to the Motor Vehicle Division to ask for a probationary drivers license. A large number do not seek lawful driving privileges. This may give them the way to come back to the driving system in a lawful manner. It may provide the reenforcement they need to successfully overcome their disease of alcoholism.

{Tape : 1; Side : A; Approx. Time Counter : 9.37}

William Shear, Rocky Mountain Interlock Devices, explained that on the monthly printouts of this devices, if it is obvious that someone is blowing two times and failing and then have someone else blow into the device for them, a calibrated breath pulse can be added. This is a learned breath pulse and anyone else who blows into the system will not pass the test.

Opponents' Testimony:

Lucas Foust, Lewis and Clark County Public Defenders Office, commented that the vast majority of his clients are truly

indigent and have limited resources for interlock devices. A second offender DUI has committed a second offense within five years. This bill is not appropriate in that it goes after second offenders. It would dovetail better with a third offender. After the third offense the vehicle can be taken away. This bill affects poor people. His figures show that this device costs approximately $170 per month. This bill will cause people to drive without a license.

He further reported from a memo from **Melissa Edwards, Public Defender's Office in Yellowstone County**. Her memo stated that Section Two of the bill would amend Section 61-5-208 to require that any individual who is convicted of a second or subsequent offense DUI or per se will have his or her license revoked for one year and "upon issuance of any restricted probationary license, during the period of revocation restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device." Many of her clients cannot afford to pay the installation and monthly usage fees. Her clients are often unable to pay rent and purchase food. Requiring them to pay for the installation and usage of the interlock device would place a heavy burden on many indigent clients. The proposed language would make it impossible for an individual to get even a probationary license without submitting to the interlock device. If you have money to fund the interlock ignition company, you can drive. If you do not have money, you cannot drive. Currently, the sentencing judge has discretion to restrict an individual to interlock driving. If the court is aware that the individual cannot afford the device, the judge usually does not impose it. Consequently, the individual loses his or her license and cannot get a probationary permit for 90 days. This 90 day requirement is an inconvenience, but in most cases it is preferable to paying the interlock fees. If the client can afford the device, the defendant usually requests the court to impose it on him. If this is done, the defendant does not lose his license but the license is restricted to interlock use. There is no need for a probationary license in such a case.

He asked that the language be changed from a second offense to a third offense. This would be a more appropriate way to handle the situation.

Questions from Committee Members and Responses:

SEN. HOLDEN asked the degree to which this would be mandatory?
REP. HARPER responded that after the second DUI within a five year period, it would be necessary to have this device.

SEN. HOLDEN remarked that his understanding is that the total cost would be shifted to the offender. **REP. HARPER** explained that the fiscal note shows $1,800 for the Department of Justice from the General Fund. However, the fiscal note states that 70 people are incarcerated at a cost of approximately $21,000 a year. This would amount to approximately $1.5 million. By diverting 10 of these offenders from the prison system, the savings would amount to over $200,000.

SEN. HOLDEN questioned the availability of the devices and/or maintenance of same in eastern Montana. **Mr. Shear** explained that they are the vendor for eastern Montana. They have mobile units and on two days a week they will make the loop.

{Tape : 1; Side : B; Approx. Time Counter : 9.45}

If they have 50 people in an immediate area, they will be able to afford a center in this area and then would be available on a 24 hour basis.

SEN. HOLDEN asked for further clarification of the cost. **Mr. Shear** explained there would be a one-time cost of $75 to install and remove. There is a $65 a month fee. There is a $5 a month insurance fee which they may choose to take. They are responsible for the unit if it is damaged. This would amount to $2.15 a day. This is the cost of a beer. The parent company allows two persons per one hundred for an indigent program. This would be totally free to the individual. They also cover one-half of the cost of another two persons per one hundred.

CHAIRMAN GROSFIELD asked **Judge McLean** if he currently used this provision in the law. **Judge McLean** explained that he has used it once in the past year. The interlock devices are not commonly known throughout the judiciary as being readily available in Montana. This bill would make all the judiciary aware that it is readily available. He believes the judiciary would use this very readily and the passage of the bill will reduce the overall costs of the DUIs in the state.

CHAIRMAN GROSFIELD remarked that people who are charged with a third offense would be less able to afford the device than they would have at a second offense. By keeping this at the second offense, the third offense may be avoided. **Mr. Foust** remarked that the second offense occurs for people who are your neighbors. Sometimes people make two mistakes within five years. A third or subsequent offender clearly has an alcohol abuse problem. He is not entirely opposed to requiring interlock devises. When requiring an interlock device after a second offense, people who are not chronic users will be included.

CHAIRMAN GROSFIELD questioned whether the judges would have a concern with not having the discretion to make a decision in this instance. **Judge McLean** believed that the person who receives a second DUI has no concept of the cost to society at large. If someone is careless enough to obtain a second DUI conviction, that individual must face some serious consequences and there should be mandatory provisions other than incarceration.

{Tape : 1; Side : B; Approx. Time Counter : 9.55}

Closing by Sponsor:

REP. HARPER summarized that this is a method to control drunk drivers. He resisted the suggested amendments. By the time someone has a second DUI, serious help is necessary. This protects society from adverse impacts and encourages an individual to seek help.

HEARING ON HB 339

Sponsor: **REP. PAUL SLITER, HD 76, Somers**

Proponents: **John Warner, Montana Judges Association**
Candace Payne, State Bar of Montana
Al Smith, Montana Trial Lawyers Association

Opponents: **None**

Opening Statement by Sponsor: Time Coun

REP. PAUL SLITER, HD 76, Somers, introduced HB 339 which creates an interim study of reapportionment of the judicial districts in the state. Senate Bill 273, which has passed the Senate, adds one judicial district and three judges to our judicial system. This bill would ask the interim committee on Law Justice and Indian Affairs to make a determination as to whether reapportionment should take place and draft legislation.

On page 1, line 18, the **Judges Association** has raised a concern that the scope of the study would be too narrow based on population estimates and caseload. He proposed a conceptual amendment that on line 18 following the word "estimate", the word "and" be stricken and a comma be inserted. On line 19, strike the period after the word "load" and insert a comma and "and on other considerations". This would give the committee the ability to take all the pertinent factors into consideration to make their decision.

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 24, 1999 at 9:05 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 269, 3/21/1999
Executive Action: HJR 5, HB 109, HB 396, HB 527, HB 559

EXECUTIVE ACTION ON HB 109

SEN. GRIMES presented an amendment HB010901.avl, **EXHIBIT(jus66a01)**. He explained that for the purposes of offsetting the cost of tax incentives onto local government and taxpayers, the amendment proposed to take that amount of money and placed into an increase in the video gambling machine tax for the length of time necessary to make up this amount. The

system. The dial-up system is a important step forward that ultimately will benefit the establishments as well as the Gambling Control Division and the taxpayers of the state.

SEN. JABS believed that the automated system would eventually pay for itself in years to come. It is time to go ahead with this right now.

SEN. DOHERTY agreed. The amendment that was adopted is significant. If funding is available, there may be a change of heart for the increase. He has had too many discussions with people whose lives have been absolutely devastated by gambling addiction. It is a farce for the state to talk about addressing the issue and not funding the needed programs. He hoped that this could be funded this legislative session.

CHAIRMAN GROSFIELD remarked that last session he carried a mandatory version of the dial-up bill. It stayed in this Committee by one vote. As fast as technology is moving, within a few years every machine in the state will be online.

Vote: Motion **that HB 109 BE CONCURRED IN AS AMENDED carried 8-1 with Holden voting no.**

{Tape : 1; Side : B; Approx. Time Counter : 10.05}

EXECUTIVE ACTION ON HB 527

SEN. HALLIGAN stated that there is an administrative requirement that someone cannot apply for a license unless they have completed a certain course. Regarding hardship cases, he questioned whether there may be other options to deal with the issue of the person who does not have the funds necessary to pay for the interlock device.

Brenda Nordlund, Department of Justice, explained that there are a constellation of factors that impact a driver who would be restricted to an ignition interlock device and these factors are many and varied. An insurance company who underwrites for DUI recorded drivers has provided here with factors about rates. Other factors include that they require a $100 reinstatement fee upon suspension or revocation of a license. These individuals will have faced a criminal penalty fine of $300 and higher. This individual needs to participate in ACT. Second and subsequent offenders are required to obtain treatment. These individuals need to have liability insurance. Their exposure increases the premiums they must pay.

A person whose drivers' license is revoked for any reason, must file proof of financial responsibility for three years following that revocation. This means that the insurance company needs to file an SR22 for these individuals and anytime their insurance is dropped the Department is notified by an SR26. They require proof of financial responsibility for a myriad of offenses that include DUIs. The proof of financial responsibility could be waived for a person who installs the interlock device. They would still need to carry mandatory vehicle liability insurance. The Department could require them to give the name of their carrier, the name of their agent, the address and telephone number, and the Department could randomly contact to see if for this subset of drivers, they are still maintaining their insurance. This would be separate from an SR22 Program. It may not be popular with the insurance companies to get rid of the SR22 Program from this population of drivers.

Help an individual maintain safe driving and overcome their drinking problem by the use of this device, is a policy decision for this Committee.

SEN. HOLDEN didn't see how this would free up any money for the indigent person to purchase the interlock system.

Ms. Nordlund explained that she could not guarantee that there would be a monetary savings. This depends on what the insurance companies know or don't know about that individual's driving record. When an insured receives a second DUI, the insurance company is not automatically notified. The only reason the insurance company learns of the second DUI is because the Department requires SR22s before they come back as a licensed driver. The insured needs to ask the insurance company for an SR22. The insurance company may not learn about the second DUI until they do a sweep of the motor vehicle records or the individual is involved in an accident. This is where the financial leeway would occur.

Because of the T21 federal highway funding, there will be a large amount of money transferred into the Highway Safety Traffic Program.

Motion: **SEN. GRIMES** moved that **HB 527 BE CONCURRED IN.**

Discussion:

SEN. HOLDEN raised a concern about these devices being serviced in rural areas of eastern Montana. **SEN. HALLIGAN** insisted that the judges in those areas would have had contacts from the

entities selling the devices before the devices would be ordered to be installed on the vehicles.

SEN. HOLDEN added that it was his understanding that this was not mandatory. **SEN. HALLIGAN** disagreed and emphasized that it was mandatory.

SEN. BARTLETT questioned what proportion of the second DUI offenders were indigent. **SEN. HALLIGAN** believed this would be 15% to 20%.

SEN. GRIMES questioned why more interlock devices weren't currently being ordered to be installed. He didn't sense a reluctance from the judges about having this mandated. He contended that this resource would lower the number of third time offenders. The intent is not to mandate something that will hurt the indigent or his or her family. He added that **Ms. Nordlund's** proposal was unique and he appreciated this concept being presented to the Committee although it may be a little too broad to implement.

SEN. BARTLETT requested more information from the Traffic Safety Division regarding T21 highway funds. **Ms. Nordlund** agreed to provide same.

Vote: Motion **carried 7-1 with Jabs voting no. SEN. DOHERTY** was excused from the meeting.

{Tape : 1; Side : B; Approx. Time Counter : 10.23}

EXECUTIVE ACTION ON HB 396

CHAIRMAN GROSFIELD clarified that amendment HB039603.avl, **EXHIBIT(jus66a03)**, had been adopted with exception of amendment no. 5.

SEN. GRIMES raised a concern with the language on page 3, (e) stating that a passenger may not steer, control; or otherwise operate an amusement ride in a manner that might harm another person. **SEN. DOHERTY** remarked that in bumper cars one is expected to steer into other bumper cars.

{Tape : 2; Side : A; Approx. Time Counter : 10.26}

Motion: **SEN. HALLIGAN** moved that **HB 396 BE AMENDED ON PAGE 3, LINE 12, BY DELETING "STEER, CONTROL, OR OTHERWISE" AND ADDING "OPERATE AN AMUSEMENT RIDE IN A MANNER THAT MIGHT HARM ANOTHER PERSON".**